

CH. 34

KIDNAPPING, UNLAWFUL RESTRAINT AND RELATED OFFENSES

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§34-1

Kidnapping and Aggravated Kidnapping

[People v. Mulcahey, 72 Ill.2d 282, 381 N.E.2d 254 \(1978\)](#) The Court upheld defendant's aggravated kidnapping conviction, holding that the confinement of the victim in her own home was "secret confinement." Secret confinement "may be shown by proof of the secrecy of both the confinement and place of confinement, or of either." Here, "the victim . . . was 'secretly confined' as effectively in her own home as if defendant had asported her to some remote isolated place of confinement." See also, [People v. Kleba, 110 Ill.App.3d 345, 442 N.E.2d 605 \(1st Dist. 1982\)](#); [People v. Harris, 68 Ill.App.3d 12, 385 N.E.2d 789 \(5th Dist. 1979\)](#) (confinement in an automobile satisfies the "secret confinement" requirement of the aggravated kidnapping statute).

[People v. Enoch, 122 Ill.2d 176, 522 N.E.2d 1124 \(1988\)](#) Defendant was convicted of aggravated kidnapping. The Court rejected the argument that the evidence failed to show that the victim was restrained by defendant in her own apartment. The Court noted that the victim's hands were bound and that her blood was found in several rooms. This evidence "supports the conclusion that the victim attempted to escape from the defendant and that she was prevented from doing so."

[People v. Eyler, 133 Ill.2d 173, 549 N.E.2d 268 \(1989\)](#) Defendant was found guilty of murder and aggravated kidnapping. The victim, a 15-year-old male prostitute, was killed in defendant's apartment. The victim suffered 14 shallow puncture wounds to his chest before death. Both of the victim's wrists had abrasions consistent with having been bound. The victim also had an injury to his eye and face, and five stab wounds in the front of his body. The cause of death was three stab wounds in the back of the victim's body. The defendant contended that the evidence failed to prove confinement against the victim's will, because a male prostitute might have consented to the bondage. Defendant also argued that the bondage injuries could have been inflicted by another of the victim's customers. The Court held that the evidence would permit a rational jury to conclude that defendant confined the victim against his will. The Court also rejected defendant's contention that the conviction for aggravated kidnapping was improper because the asportation of the victim was merely incidental to the murder. The Court found that the confinement here was not merely "incidental to" the murder.

[People v. Dressler, 317 Ill.App.3d 379, 739 N.E.2d 630 \(3d Dist. 2000\)](#) For purposes of aggravated kidnapping, which is defined as committing the offense of kidnapping "while armed with a dangerous weapon, as defined in Section 33A-1" of the Criminal Code, a canister of mace is not a "dangerous weapon." The court noted, however, that mace may be a "dangerous weapon" under the armed robbery statute, which does not depend on the definition of "dangerous weapon" under §33A-1. See also, [People v. Elliott, 299 Ill.App.3d 766, 702 N.E.2d 643 \(4th Dist. 1998\)](#).

[People v. Casiano, 212 Ill.App.3d 680, 571 N.E.2d 742 \(1st Dist. 1991\)](#) Factors to be considered in determining whether an asportation or detention is merely part of the

underlying offense include: (1) the duration of the asportation or detention, (2) whether the asportation or detention occurred during the commission of the separate offense, (3) whether the asportation or detention is inherent in the separate offense, and (4) whether the asportation or detention created a significant danger independent of that posed by the separate offense. Here, defendant was properly prosecuted for kidnapping as well as aggravated criminal sexual assault. Defendant forced the complainant to walk to the apartment where the sexual assaults occurred, the purpose of changing locations was to make the sexual assaults easier to commit, and the asportation occurred before (and not during) the sexual crimes. Furthermore, the act of moving the victim to a more secluded location is not inherent in sexual assault and creates a significant danger independent of that posed by the sexual offense.

People v. Smith, 91 Ill.App.3d 523, 414 N.E.2d 1117 (1st Dist. 1980) A conviction for aggravated kidnapping was reversed. Where the gist of the offense was robbery and the victim was driven only a short distance (twenty minutes) from where he first encountered the defendants, the asportation was incidental to the robbery and posed no significant added risk to the victim.

People v. Earl, 104 Ill.App.3d 846, 433 N.E.2d 722 (2d Dist. 1982) A defendant may be convicted of aggravated kidnapping even where the infliction of great bodily harm precedes completion of the kidnapping, provided that the harm results from the same continuing state of mind as the kidnapping.

People v. Algarin, 200 Ill.App.3d 740, 558 N.E.2d 457 (1st Dist. 1990) Under the plain language of the kidnapping statute, a parent cannot be charged with kidnapping his or her own child. The Court rejected the argument that the statute should be construed as meaning only that a parent with custody rights cannot be charged with kidnapping. In the absence of any indication to the contrary, the term "parent" is to be given its plain and ordinary meaning, which includes biological fathers. Since defendant was the biological father of the alleged victim, he could not be convicted of kidnapping although he had never lived with his daughter or been married to the girl's mother.

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People v. Gonzalez, 239 Ill.2d 471, 942 N.E.2d 1246 (2011)

The secret-confinement element of the aggravated kidnapping statute, 720 ILCS 5/10-1(a), may be shown by evidence of the secrecy of the confinement or the secrecy of the location of the confinement. Confinement is secret when it isolates or insulates the victim from meaningful contact or communication with the public, i.e., when the confinement is in a place or in a manner that makes it unlikely that members of the public will know or learn of the victim's unwilling confinement within a reasonable period of time. There is no requirement that the confinement occur inside a physical structure, and no *per se* rule that the visibility of the victim in a public place precludes a finding of secret confinement. A kidnapper may choose to hide the victim in plain sight.

A rational trier of fact could find that the State satisfied its burden of proving secret confinement. Defendant offered to hold a baby while the baby's father was completing paperwork at a hospital. Without the parents' permission or knowledge, defendant left the

hospital with the baby, and sought to pass the baby off as her own. The baby was unable to escape, cry out, or call attention to her plight. Even though the defendant kept the baby in public view, her conduct isolated the infant from meaningful contact with the public.

People v. Siguenza-Brito, 235 Ill.2d 213, 920 N.E.2d 233 (2009)

1. The offense of kidnapping can occur in three ways: (1) by knowingly and secretly confining another against his will (confinement), (2) by using force or the threat of the imminent use of force to carry another from one place to another with intent to secretly confine him against his will (asportation), or (3) by deceit or enticement inducing one to go from one place to another with intent to secretly confine him against his will (inducement). Where a defendant is charged under the second theory, several factors are considered to determine whether the asportation is merely ancillary to another offense or “rises to the level of an independent crime of kidnapping.” Those factors include: (1) the duration of the asportation or detention; (2) whether the asportation or detention occurred during the commission of a separate offense; (3) where asportation or detention is inherent in a separate offense; and (4) whether the asportation or detention created a significant danger to the victim independent of that posed by the separate offense.

2. Here, defendant was proven guilty beyond a reasonable doubt of kidnapping under the asportation theory. First, the complainant was forced into an SUV and driven for four or five minutes. Second, the asportation occurred before the subsequent offense – criminal sexual assault – and not as part of that offense. Third, asportation is neither an element of criminal sexual assault nor inherent in that offense. Fourth, the asportation imposed a significant danger to the complainant independent of the danger created by the criminal sexual assault, because she was transported to a secluded area where there was a risk of “far more serious activity.”

3. Furthermore, the evidence was sufficient to convict under the “confinement” theory of kidnapping. Because the complainant was driven to a garage and the overhead door was closed, a rational trier of fact could have found that the confinement was both knowing and secret.

4. The rule against double enhancement precludes use of a single factor as both an element of an offense and as a basis for a harsher sentence, or use of a single factor twice to elevate the severity of the offense itself. The rule against double enhancement was not violated where defendant was convicted of two offenses – aggravated kidnapping predicated on criminal sexual assault and aggravated criminal sexual assault predicated on kidnapping – which relied on proof of the same facts.

The court stressed that defendant was separately charged and convicted of aggravated kidnapping on two theories – asportation and confinement – and that either theory could have been the predicate felony for aggravated criminal sexual assault. Therefore, an enhanced offense was not used to enhance another offense which involved the same conduct.

Furthermore, the double enhancement rule does not prohibit use of a single factor to enhance separate and distinct offenses. (Overruling **People v. McDarragh, 175 Ill.App.3d 284, 529 N.E.2d 808 (2d Dist. 1988)**). Here, each predicate felony (criminal sexual assault and kidnapping) was used only once – to create separate enhanced offenses of aggravated kidnapping and aggravated criminal sexual assault.

(Defendant was represented by Assistant Defender Manuel Serritos, Chicago.)

People v. Gonzalez, 392 Ill.App.3d 323, 910 N.E.2d 1214 (1st Dist. 2009)

The defendant was found guilty but mentally ill of aggravated kidnapping after she left

a Chicago clinic with a baby that was not hers. The defendant was in the same waiting room as the baby's parents, and offered to hold the child when it started crying.

While the parents were distracted, defendant left with the child. Within 15 minutes, defendant was detained by a security guard who worked in a hospital "two or three blocks from the clinic."

On appeal, the defendant argued that there was insufficient evidence to establish "secret confinement," an essential element of aggravated kidnapping. A majority of the Appellate Court agreed.

First, in the short time before her arrest, defendant remained in public places. In addition, "everybody who saw her – strangers, hospital security guards, and police officers – immediately realized defendant was carrying a baby. . . . [I]t is the constant 'public view or awareness' of the child that takes the case out of the kidnapping statute."

Citing [People v. Mulcahey, 72 Ill.2d 282, 381 N.E.2d 254 \(1978\)](#), the dissent argued that the majority "failed to address the second half of the accepted definition of secret confinement," i.e. that defendant kept the baby from the knowledge or notice of persons liable to be affected by the act. According to the dissent, secret confinement was established "because walking along with the baby as if were her own allowed the defendant to avoid arousing suspicion or in any way revealing to the public that she carried the child without the parents' permission."

(This summary was written by Deputy State Appellate Defender Daniel Yuhas.)

People v. Robinson, 2016 IL App (1st) 130484 (No. 1-13-0484, 6/17/16)

An incorrect jury instruction constitutes second prong plain error where it creates a serious risk that the jury incorrectly convicted the defendant because it did not understand the applicable law.

The State charged defendant with aggravated kidnapping under the inducement theory of kidnapping in that he used deceit or enticement to induce the victim to go from one place to another with the intent to secretly confine her against her will. 720 ILCS 5/10-1(a)(3). But the jury was incorrectly instructed under the actual secret confinement theory of kidnapping that the State had to prove defendant secretly confined the victim against her will. 720 ILCS 5/10-1(a)(1).

The erroneous jury instruction constituted second prong plain error. The essential issue at trial was whether defendant induced the victim to accompany him using deceit and enticement. The jury instruction omitted this essential element. The jury thus conceivably convicted defendant without finding an essential element of the offense.

The court reversed the aggravated kidnapping conviction.

(Defendant was represented by Assistant Defender Meredith Baron, Chicago.)

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Unlawful Restraint

[People v. Wisslead, 108 Ill.2d 389, 484 N.E.2d 1081 \(1985\)](#) The Court rejected the argument that the unlawful restraint statute is unconstitutionally vague and overbroad. The Court concluded that the language used in the statute (i.e. "detain" and "legal authority") does not

"render it impossible for an ordinary citizen to discern what conduct is prohibited by the statute."

[People v. Satterthwaite, 72 Ill.App.3d 483, 391 N.E.2d 162 \(4th Dist. 1979\)](#) The victim, who was held by the defendant, was "detained" within the meaning of the unlawful restraint statute where her freedom of locomotion was impaired and "she was not free to go or stay as she desired."

[People v. Jones, 93 Ill.App.3d 475, 417 N.E.2d 647 \(1st Dist. 1981\)](#) Unlawful restraint consists of the knowing confinement or detention of a person without sufficient legal authority. The Court held that unlawful restraint occurs even if the complainant was restrained for only a few seconds - "If a party is actually restrained without legal authority, the duration of the restraint is inconsequential."

[People v. Warner, 98 Ill.App.3d 433, 424 N.E.2d 747 \(4th Dist. 1981\)](#) Defendant's conviction for unlawful restraint was upheld where he confined his children to an unventilated bedroom for one week during the summer. The Court rejected the claim that the children were not detained because they were allowed to go shopping. So long as the individual's freedom of locomotion is impaired, physical force need not be used to accomplish the restraint. Since the children were not free to leave the custody and control of defendant and were kept in their rooms the vast majority of the time, the jury could find that they were "detained" despite their occasional release.

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[People v. Lissade, 403 Ill.App.3d 609, 935 N.E.2d 1041 \(2d Dist. 2010\)](#)

Unlawful restraint occurs when the defendant knowingly detains another without legal authority. [720 ILCS 5/10-3\(a\)](#). Acknowledging a conflict in authority, the Appellate Court held that the defendant's motivation is irrelevant in determining whether unlawful restraint has been committed. (Rejecting [People v. Kuykendall, 108 Ill.App.3d 708, 439 N.E.2d 521 \(4th Dist. 1982\)](#) and [People v. Haybron, 153 Ill.App.3d 906, 506 N.E.2d 369 \(3d Dist. 1987\)](#)). The court noted that it previously rejected [Kuykendall](#) and [Haybron](#) in [People v. Bergin, 227 Ill.App.3d 32, 590 N.E.2d 939 \(2d Dist. 1992\)](#).

Thus, defendant was properly convicted of unlawful restraint where he grabbed his ex-girlfriend by the throat and held her on a couch, although his motive for being at the girlfriend's house was to remove his children from the girlfriend's custody.

(Defendant was represented by Assistant Defender Steve Clark, Supreme Court Unit.)

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Child Abduction

[People v. Williams, 133 Ill.2d 449, 551 N.E.2d 631 \(1990\)](#) The Court upheld the constitutionality of the child abduction statute which states that child abduction occurs where the defendant "intentionally lures or attempts to lure a child under the age of 16 into a motor

vehicle without the consent of the parent or lawful custodian of the child for other than a lawful purpose." The defendant contended that the phrase "for other than a lawful purpose" is unconstitutionally vague. He argued that because the phrase is not defined, a citizen has no way of ascertaining what conduct might subject him to prosecution. The Court rejected this contention. Given its ordinary meaning, the phrase 'other than a lawful purpose' means any purpose which is unlawful. In [People v. Rogers, \(1989\), 133 Ill.2d at 15](#), this court stated that 'other than a lawful purpose' implies actions which violate our Criminal Code. We do not think that 'other than a lawful purpose' can reasonably be said to involve violations of administrative regulations or city ordinances, as defendant suggests. . . . Courts in other States have construed similar language as involving violations of criminal laws.

In light of the strong State interest in protecting children from abduction and the limiting construction given the phrase "other than a lawful purpose," the statute is not unconstitutionally vague.

[People v. Rogers, 133 Ill.2d 1, 549 N.E.2d 226 \(1989\)](#) The Legislature did not act unreasonably or create an overbroad statute by defining a "child," for purposes of the child abduction statute, as a person under the age of 16.

[People v. Woodrum, 223 Ill.2d 286, 860 N.E.2d 259 \(2006\)](#) The Court held that the following provision of the child abduction statute: "[T]he luring or attempted luring of a child under the age of 16 into a motor vehicle without the consent of the parent or lawful custodian of the child shall be prima facie evidence" the defendant acted "for other than a lawful purpose," creates an impermissible mandatory rebuttable presumption with respect to intent and is unconstitutional. The Court held, however, that this provision was severable and its application in this case was harmless error.

[People v. Morrison, 223 Ill.App.3d 176, 584 N.E.2d 509 \(3d Dist. 1991\)](#) Although the child abduction statute does not violate due process or equal protection, it was unconstitutionally applied to a natural father who had lived with the child and the child's mother for over four years. The circumstances of this case were not those envisioned by the Legislature when it enacted the statute, as there was no evidence that defendant was a neglectful father who had abandoned his child. To the contrary, defendant had resided with the child since his birth, provided uninterrupted financial and emotional support, exhibited the characteristics that would be expected of a legally-adjudicated father, and shared family responsibilities toward the child as if he and the mother had been married.

[People v. Wenger, 258 Ill.App.3d 561, 631 N.E.2d 277 \(1st Dist. 1994\)](#) The Court found that the evidence "is simply not sufficient to prove that defendant was attempting to lure [the complainant] into his vehicle." Although defendant talked to other girls and motioned three times for the complainant to come to his truck, the offense of child abduction requires more than a mere wave. Thus, without some "affirmative conduct evidencing an intent to lure a child into a vehicle . . . the innocuous gesture of waving is insufficient to prove beyond a reasonable doubt that defendant was attempting to lure the child" into his vehicle.

[People v. Williams, 105 Ill.App.3d 372, 434 N.E.2d 412 \(1st Dist. 1982\)](#) Defendant's conviction for child abduction was upheld. The evidence showed that although defendant knew of a court order terminating her custody, she took her child from school, kept him several days, and concealed him at a neighbor's house at night.

[**People v. Harrison**, 82 Ill.App.3d 530, 402 N.E.2d 822 \(4th Dist. 1980\)](#) Defendant's conviction for child abduction was upheld. Defendant, who had joint custody with his ex-wife, set up residence with his children in Mississippi. Since neither parent could remove the children without infringing on the rights of the other parent, defendant was properly convicted.

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